In the High Court of Judicature at Madras

Dated:04.04.2005

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S.K. KRISHNAN

Habeas Corpus Petition No.1234 of 2004

Mumtazz .. Petitioner

vs.

1. The State of Tamil Nadu rep. By its
Secretary to Government
Public (SC) Department
Fort St. George
Chennai 9.

2. The Union of India rep. By its
Secretary to Govt., Ministry of Finance
Department of Revenue
(COFEPOSA Unit)
Central Economic Intelligence Bureau
Janpath Bhavan, Janpath
New Delhi 110 001. .. Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying of the issuance of a writ of Habeas Corpus calling for the records of the 1st Respondent connected with the order in SR/I/1236-4/2004 Public [SC] Department dated 13.10.2004, quash the same and set at liberty the detenu J.Mohamed Yousuf, S/o K.G.Jinna, now detained in Central Prison, Chennai under the provisions of conservator of Foreign Exchange and prevention of smuggling Activities Act.

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For petitioner : Mr. B. Kumar, Sr.Counsel
for Mr. R. Loganathan

For respondents: Mr. A. Kandasamy
Addl. Public Prosecutor for R.1

Mrs. Vanathi Srinivasan
Addl. Central Govt., standing
counsel for R2.

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ORDER

(Order of the Court was made by P. SATHASIVAM,J.,)

One Mumtazz, mother of the detenu by name J. Mohamed Yousuf, challenges the impugned detention order dated 13.10.2004 of the first respondent, detaining her son under Section 3 (1) (ii) of the Conservation of Foreign Exchange and Smuggling Activities Act, 1974, (in short "COFEPOSA Act").

2. Heard Mr. B. Kumar, learned senior counsel for the petitioner as well as the learned counsel for the respondents.

3. Though several grounds have been raised challenging the impugned order of detention, Mr. B. Kumar, learned senior counsel appearing for the petitioner at the foremost contended that as the detaining authority has relied on the statement dated 09.09.2004 of one Haseena Banu, Wife of Zakir Hussain, who is a King Man in the alleged transaction, the detenu was not supplied with the copy of the same, which prevented him from making an effective representation and it infringes the rights under Article 22 (5) of the Constitution of India.

4. On the other hand, the learned Additional Public Prosecutor would submit that the statement dated 09.09.2004 of Haseena Banu is not a relied upon document; hence, there is no need to supply a copy of the same to the detenu.

5. The information furnished in the grounds of detention shows that the house of one Zakir Hussain, viz., uncle of the detenu was searched on 02.09.2004. When he was summoned to appear before the Superintendent of Customs (DIU) Custom House, Chennai-1 on 03.09.2004, he did not respond. It is also brought to our notice that it was Zakir Hussain, who took care of admission of shipping bill, examination of stuffing of goods. The detenu as well as the said Zakir Hussain knew that exporting sea dragon, sea horse and sea cucumber. In para 1 (xv) of the grounds of detention it is specifically stated that in order to trace the said Zakir Hussain, the Officers of DIU went to his residence on 09.09.2004, but he was not available and his wife Smt. Hasseena Banu, who was present at that time gave a statement before the Customs Officer on 09.09.2004. In that, she has stated that she was residing with her husband Zakir Hussain and child at No. 28/2, Savarimuthu Street, Mannady, Chennai-1, that her husband has gone to Nepal in connection with his business, that she did not know when he would be back and that her husband did not contact her so far. It is further seen, pursuant to the request of the Customs Officers, she handed over a photograph of her husband and she has signed on the reverse of the photograph.

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6. As rightly pointed out by Mr. B. Kumar, learned senior counsel for the petitioner that a reading of the entire grounds of detention amply shows that the said Zakir Hussain has a major role in the alleged incident and that may be the reason for the Customs Officers to go to his house in search of him and after noticing his absence in the house, they obtained a statement from his wife Haseena Banu. Though the learned Additional Public Prosecutor has replied that the detaining authority has merely referred to the statement of Haseena Banu dated 09.09.2004, in the light of our discussion, particularly the involvement of Zakir Hussain in the alleged transaction, the statement of Haseena Banu is relevant and the detenu is entitled to a copy of the same in order to make an effective representation. As said earlier, we are satisfied that while passing the impugned detention order, the detaining authority has specifically relied upon the statement of Haseena Banu, under Section 107 of the Customs Act, 1962, on 09.09.2004, which is a vital document, a copy of which has not been supplied to the detenu, which is in violation of Article 22 (5) of Constitution of India. On this ground, the impugned order of detention is liable to be quashed.

Under these circumstances, the impugned detention order dated 13.10.2004, is set aside; and the detenu is directed to be set at liberty forthwith from custody unless he is required in connection with any other case or cause.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government
   State of Tamil Nadu
   Public (SC) Department
   Fort St. George
   Chennai 9.

2. The Secretary to Government,
   Union of India
   Ministry of Finance
   Department of Revenue
   (COFEPOSA Unit)
   Janpath
   New Delhi 110 001.

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3. The Superintendent of Central Prison
   Central Prison, Chennai 3.

4. The District Collector, Chennai.

5. The Public Prosecutor, Madras.

6. The Joint Secretary to Govt.,
   Public (Law and Order), Dept.,
   Fort St. George, Chennai-9.

7. The Sub Asst. Registrar,
   COFEPOSA Section,
   Administrtive Department,
   High Court, Madras.

One cc to Mr.R.Loganathan, Advocate SR.15973.

HCP.No.1234 of 2004

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